

IN THE CIRCUIT COURT OF PETTIS COUNTY, MISSOURI

STATE OF MISSOURI ex rel.,
JEREMIAH W. (JAY) NIXON,
Attorney General of Missouri,

AND THE MISSOURI DEPARTMENT
OF NATURAL RESOURCES,

Plaintiffs,

v.

Case No. _____

MELVIN A. HEAPER,
EMMA L. HEAPER,
CLARK A. HEAPER, and
621 E. Boonville
Sedalia, MO 65302 (Pettis County)

CHARLES HEAPER,
502 E. Jackson
Sedalia, MO 65301 (Pettis County)

Defendants.

PETITION FOR PRELIMINARY INJUNCTION, PERMANENT INJUNCTION,
AND CIVIL PENALTIES

COMES NOW, Plaintiff, the State of Missouri, at the relation of Jeremiah W. (Jay) Nixon, the Attorney General of Missouri, and the Missouri Department of Natural Resources, and for its petition against Defendants Melvin Heaper, Emma Heaper, Charles Heaper, and Clark Heaper (“Defendants”), states as follows:

ALLEGATIONS PERTAINING TO ALL COUNTS

1. Plaintiff, Jeremiah W. (Jay) Nixon, is the duly qualified, elected, and acting Attorney General of Missouri. The Attorney General is authorized to institute, in the

name and on behalf of the state, civil proceedings at law or in equity necessary to protect the rights and interests of the state under §27.060, RSMO. Plaintiff brings this action in the name of the people of Missouri. The Missouri Solid Waste Management Law authorizes the Attorney General's Office to bring this suit pursuant to §260.240.1, RSMo.

2. The Missouri Department of Natural Resources, ("the Department"), is a duly authorized state agency created under Section 640.010, RSMo, in part, to enforce the provisions of the Missouri Solid Waste Management Law, §§260.200 through 260.345, RSMo, (as amended), and the accompanying regulations.

3. At all times relevant herein, Defendants Melvin, Emma, and Clark A. Heaper have owned and/or controlled certain real property located at 621 E. Boonville, Sedalia, Missouri. This property is more specifically described as part of the Southeast Quarter of the Southwest Quarter of Section Thirty-Five (35), Township Forty-Six North (46N), Range Twenty-One West (21W) in Pettis County, Missouri. This property shall hereinafter be referred to as "the site."

4. At all time relevant herein, Defendants have operated an unincorporated household solid waste disposal service business called Heaper Sanitation from the site. All four Defendants are actively engaged in the business activities of Heaper Sanitation.

5. Based upon information and belief, the business of Heaper Sanitation involves the Defendants picking up solid waste (household trash) from various

households throughout Pettis County and taking at least a portion of this solid waste to the site for sorting and final disposal.

6. The acts of Defendants alleged herein occurred at the site in Pettis County, Missouri and therefore venue is proper pursuant to §260.240, RSMo.

7. On or about April 7, 1999 and February 13, 2001, the Department inspected the site in response to citizen complaints of illegally disposed of solid waste. During the inspection, the Department observed solid waste located on the ground of the site including paper bundles, barrels, cushions, metal scraps, plastic bottles, clothing, toys, furniture, waste tires, and household waste. Department Staff informed Defendants that any solid waste generated as a result of their business must be taken to a legal disposal site and could not remain on the site. The Department requested that the Defendants submit a plan to bring the site into compliance. No clean-up plan was received by the Department.

8. On or about September 26, 2001, the Department reinspected the site after another citizen complaint. Department investigators observed several years of accumulated solid waste on the site. Mosquitoes, flies, and other vectors were also observed at the site. The Department issued Notice of Violation (“NOV”) No. 1846 JC to Heaper Sanitation Service on September 26, 2001, for operating a solid waste processing facility without a permit in violation of §260.205.1 and illegally disposing of solid waste in a manner as to create a public nuisance or adversely affect public health in violation of

§260.210. A true and accurate copy of NOV No. 1846 JC is attached hereto and incorporated as Exhibit A.

8. A corrective action agreement was agreed to between the Department and Defendants Melvin and Emma Heaper on September 26, 2001. The corrective action agreement established a plan whereby the Defendants agreed to clean up all solid waste, including all recyclable material, from an area specified by the Department on a monthly basis. The Defendants also agreed to provide receipts of proper disposal to any Department personnel upon request. A true and accurate copy of the corrective action agreement is attached hereto and incorporated as Exhibit B.

9. Follow-up inspections conducted by the Department per the clean up agreement revealed several instances of noncompliance on the part of Defendants. A May 10, 2002 inspection of the site revealed that none of the waste in the defined area had been removed. Inspections conducted on September 18, 2002 and October 18, 2002 revealed that waste in the defined area had not been adequately removed and additional waste had been placed in areas previously cleaned up. NOV No. 0652 JC was issued on October 18, 2002 to Heaper Sanitation Service for operating a solid waste processing facility without a permit in violation of §260.205.1 and for improper disposal of regulated solid waste and creating a public nuisance in violation of §260.210.1(1). A true and accurate copy of NOV 0652 JC is attached and incorporated as Exhibit C.

10. The waste observed on the site in the above-mentioned inspections and NOVs constitutes solid waste as defined in §260.200(34), RSMo 2000.

11. Section 260.210.1(1) of the Missouri Solid Waste Management Law makes it illegal for any person to dump or deposit solid waste onto the surface of the ground.

12. Section 260.205.1, RSMo 2000, makes it unlawful for any person to operate a solid waste disposal area or a solid waste processing facility without obtaining an operating permit from the Department.

13. Pursuant to §260.240.1, RSMo, Defendants are subject to the imposition of a civil penalty not to exceed \$1,000.00 per day per violation, or part thereof, that they have illegally disposed of solid waste, operated an illegal solid waste disposal area, allowed others to do so, or otherwise violated the provisions of the Missouri Solid Waste Management Law, §§260.200 to 260.245, RSMo.

**COUNT I: STATUTORY ACTION UNDER THE
MISSOURI SOLID WASTE MANAGEMENT LAW**

14. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1-13.

15. Defendants' above-described actions constitute the unlawful dumping, collection, or disposal of solid waste within the meaning of § 260.210, RSMo 2000 and/or the operation of an illegal solid waste disposal area within the meaning of § 260.205.1, RSMo 2000.

16. Pursuant to § 260.240.1, RSMo 2000, Defendants are subject to the imposition of a civil penalty not to exceed \$1,000.00 per day for each day, or part thereof, that they have illegally disposed of solid waste, operated an illegal solid waste disposal area, or otherwise violated the provisions of §§ 260.200 to 260.245.

17. Defendants have illegally disposed of solid waste and/or operated an illegal solid waste disposal area since at least December 11, 1990.

18. The unlawful acts of Defendants are of such a continuous nature, and are in such conscious disregard for the public health and the protection of the soils, waters, and air resources of the State of Missouri, that Plaintiff believes the Missouri Solid Waste Management Law will continue to be violated by Defendants unless they are restrained by the Court.

19. Pursuant to § 260.240.1, RSMo 2000, Defendants are subject to an injunction compelling them to remove the illegally dumped solid waste and to cease bringing any solid waste to the site.

20. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for this Court's order that:

A. Issues a preliminary and permanent injunction compelling Defendants to promptly remove and properly dispose of the solid waste illegally dumped on the site at a permitted disposal facility and to cease bringing solid waste to the site;

B. Imposes against each Defendant an appropriate civil penalty not to exceed \$1,000.00 per day for each day, or part thereof, that he has disposed of or stored illegal solid waste or otherwise violated the provisions of §§ 260.200 to 260.245; and

C. Grants such further relief as this Court deems just and proper.

COUNT II: PUBLIC NUISANCE

21. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1-20.

22. Defendants' maintenance of the illegal solid waste disposal area actually interferes with the use and enjoyment of private and public property near the site.

23. Defendants' maintenance of the illegal solid waste disposal area is detrimental to reasonable uses of nearby public and private property.

24. Defendants' maintenance of the illegal solid waste disposal area threatens the health, safety, peace, and welfare of persons reasonably using nearby public and private property.

25. The illegal solid waste disposal area maintained by Defendants is a public nuisance.

WHEREFORE, Plaintiff prays for this Court's order that:

A. Finds that Defendants are responsible for the creation of the nuisance condition;

B. Issues a preliminary and permanent injunction compelling Defendants to promptly abate the nuisance by removing and properly disposing of the solid waste stored at the site to a legal destination;

C. Grants such further relief as this Court deems just and proper.

Respectfully submitted,

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